



Richard L. Mayer
KENYON & KENYON
One Broadway
New York, New York 10004

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| In re Application of | : | |
| LAUBLE, Christian, et al. | : | |
| U.S. Application No.: 09/485,074 | : | |
| PCT No.: PCT/EP98/04659 | : | DECISION ON PETITION |
| International Filing Date: 24 July 1998 | : | TO REVIVE ABANDONED |
| Priority Date: 02 August 1997 | : | APPLICATION UNDER 37 |
| Attorney's Docket No.: 10537/68 | : | CFR 1.137(b) |
| For: VIBRATION DAMPER FOR A TUBULAR | : | |
| DRIVE SHAFT | : | |

This decision is issued in response to applicants' "Petition To Revive Under 37 CFR 1.137(b) filed on 27 September 2000. Applicants have paid the required petition fee.

BACKGROUND

On 24 July 1998, applicants filed international application PCT/EP98/04659 which claimed a priority date of 02 August 1997 and which designated the United States. On 11 February 1999, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 03 December 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the IB) and payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 02 February 2000.

On 02 February 2000, applicants filed a transmittal letter for entry into the national stage in the United States which indicates that it was accompanied by, among other materials, a translation of the international application into English and an unexecuted declaration of the inventors. The transmittal letter noted that the international application had already been transmitted by the IB, and it authorized a charge to Deposit Account No. 11-0600 for required fees, including the basic national fee.

On 22 March 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the

oath or declaration later than thirty months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 27 September 2000, applicants filed the Petition To Revive considered herein, accompanied by a "Response To Missing Requirements."

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, the "required reply" was a proper response to the Notification Of Missing Requirements mailed on 22 March 2000, that is, an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing this declaration after the thirty month deadline. The "Response To Missing Requirements" filed with the Petition To Revive on 27 September 2000 included an executed declaration in compliance with 37 CFR 1.497 and the authorization to charge Deposit Account No. 11-0600 \$130 for the required surcharge. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 22 April 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the required petition fee. The Petition To Revive provided authorization to charge Deposit Account No. 11-0600 \$1,210 for the petition fee. Item (2) is satisfied.

As for item (3), the Petition To Revive expressly states that the "entire delay in Applicant's failure to file a response to the Notification Of Missing Requirements was unintentional." This statement is construed as being the statement required by 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Applicants **must** notify this Office if this is **not** a correct interpretation of this statement. Based on this interpretation of the statement contained in the Petition to Revive, item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition To Revive is granted.

CONCLUSION

Applicants' Petition To Revive is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, including mailing of a Notification Of Acceptance Of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating 27 September 2000 as the date of receipt of the 35 U.S.C. 371(c) requirements.



Boris Milef
PCT Legal Examiner
PCT Legal Office

RMR/BM:rmr



Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459